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BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of	)	
	)	
Implementation of Section 9	)	MD Docket No. 94-19
of the Communications Act	)	
	)	
Assessment and Collection of	)	
Regulatory Fees for the 1994	)	
Fiscal Year	)	

**COMMENTS OF SOUTHWESTERN BELL CORPORATION**

Southwestern Bell Corporation (SBC) files these comments on behalf of its operating subsidiaries in response to the Commission's Notice of Proposed Rulemaking (NPRM).<sup>1</sup> The Commission seeks to implement Section 9 of the Communications Act of 1934, added by the Omnibus Budget Reconciliation Act of 1993.<sup>2</sup> Section 9(a) authorizes the Commission to assess and collect annual regulatory fees to recover costs incurred by the agency in carrying out its enforcement activities, policy and rulemaking activities, user information services, and international activities.<sup>3</sup>

SBC submits that "large" regulatory fees payors should be permitted to pay fees on a lump sum basis on September 30; that payors should be permitted to make such payments by electronic means (preferably via the Automated Clearing House [ACH]); that carrier payors should be allowed the option to file fee remittance reports, and be assessed, either at the operating company level or

<sup>1</sup> FCC 94-46, released March 11, 1994.

<sup>2</sup> The new Section 9 of the Communications Act is codified at 47 U.S.C. §159.

<sup>3</sup> 47 U.S.C. §159(a)(1).

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at the holding company or aggregate of market area level; and, that the access line count upon which a Tier 1 local exchange carrier's (LEC's) fees are based should be the billable access line count provided on the LEC's Quarterly Automated Reporting Management Information System (ARMIS) Report, FCC Report 43-01, filed with the Commission, for the fourth quarter.

I. LARGE REGULATORY FEE PAYORS SHOULD BE PERMITTED TO MAKE AN ANNUAL PAYMENT ON SEPTEMBER 30.

The Commission contemplates treating LECs whose annual fees, based on access line count, would exceed \$700,000 as "large" regulatory fee payors.<sup>4</sup> Southwestern Bell Telephone Company (SWBT), SBC's LEC subsidiary, would qualify as a large regulatory fee payor based upon its current access line count.<sup>5</sup> The Commission proposes to allow large regulatory fee payors to elect to make two payments in fiscal year 1994 instead of paying the entire amount all at once.<sup>6</sup> The Commission also seeks comment on whether large fee payors should be permitted to pay their annual regulatory fee in four or more installments in future years.<sup>7</sup>

SBC does not object to the Commission's allowing a large fee payor to elect to make installment-type payments. Indeed, such

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<sup>4</sup> NPRM, para. 31.

<sup>5</sup> Line 2150 of SWBT's 4th Quarter FCC Report 43-01, filed March 31, 1994, reflects an access line count of 12,564,206. As suggested above, supra at Section IV, the count reflected in this quarterly report should be adopted by the Commission for purposes of assessing annual fees based upon billable access line counts for Tier 1 LECs.

<sup>6</sup> NPRM, para. 29.

<sup>7</sup> Id.

payment flexibility is reasonable and should be permitted. However, a payor still should be permitted to make one full-amount fee payment (whether "standard" or "large") on September 30, and not earlier, regardless of the availability of installment payments.

First, as noted in the NPRM, the government's fiscal year ends on September 30.<sup>8</sup> In typical commercial transactions, a bill becomes due and payable only after a supplier completes work or, at a minimum, actually incurs expenses. The entirety of the "debt" incurred by regulatory fee payors to the Commission, representing regulatory services that would be rendered through and including September 30, rightfully would mature and become payable only on September 30.

Second, no hardship to the Commission would result because the fees represent "offsetting collections" of monies already appropriated for the Commission's day to day use.<sup>9</sup> The fees are merely a form of reimbursement, not a return to a revenue producing entity. Thus, the benefit of the time value of money should be retained by payors.

Finally, the sooner a company incurs an expense, the more interest costs (expense/debt) it incurs. Such additional costs are unnecessary to, and in fact beyond, mere collection of originally appropriated funds that have been expended.

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<sup>8</sup> NPRM, para. 4, n. 5.

<sup>9</sup> NPRM, para. 7, n.14. For example, the Commission notes that for the fiscal year ending September 30, 1994, it has been appropriated \$160,300,000, of which \$60,400,000 of offsetting collections must be assessed and collected under the new law.

## II. PAYMENTS BY ELECTRONIC MEANS SHOULD BE PERMITTED

SBC supports the Commission's proposal to allow, on a limited, experimental basis, the filing of fee payments by electronic means.<sup>10</sup> It also supports the Commission's proposal to amend its rules to permit all fees and other monies to be paid by such means.<sup>11</sup>

Electronic fee payment offers a degree of confidence that monies are received on a certain date. Its reliability is unmatched by any alternative means of payment. Such reliability is critical where, as in this instance, the Commission is statutorily required to charge a 25 per cent penalty to any regulatee that fails to pay its regulatory fee in a timely manner.<sup>12</sup> Electronic fee payment offers other advantages as well. It is far easier to administer and record than other available means of payment, and allows both the Commission and the payor to accurately forecast cash flow. The unknowns customarily associated with paper processing are avoided. Thus, postal delays, float and the potential for inappropriate or mistaken handling would be eliminated.

SBC further recommends that a company be allowed to pay fees electronically by ACH rather than by Fed Wire. ACH is much cheaper, both as to sending and receiving. Therefore, both the Commission and the payor would benefit. The Commission would also benefit from the addenda record which provides payment detail that

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<sup>10</sup> NPRM, para. 37.

<sup>11</sup> Id., n. 47.

<sup>12</sup> 47 U.S.C. §159(c)(1).

a payor could submit with its transfer. This would allow the Commission to ensure proper deposit of the payment and crediting on its books.

III. THE COMMISSION SHOULD ALLOW CARRIERS THE OPTION TO FILE FEE REMITTANCE REPORTS AND BE ASSESSED AT THE HOLDING COMPANY OR AGGREGATE OF MARKET AREA LEVEL.

The Commission requests specific comment on whether telephone local exchange carriers should be assessed fees on an operating company level or holding company level, for purposes of determining whether fees are large.<sup>13</sup> Assessment at either level, insofar as SWBT is concerned, is essentially moot given that SWBT would be a large fee payor in its own right. However, SBC supports giving LECs the option of being assessed at either the operating company level or holding company level.

SBC submits, moreover, that an equally as relevant and important inquiry is whether other carriers should also be given the option of being assessed at a holding company level or aggregate level rather than at an operating entity level. For example, as diagramed in SWBT's Cost Allocation Manual, SBC's cellular operations consist of multiple corporations and partnerships representing different market areas.<sup>14</sup> The Commission would significantly further its goals of efficiency and ease of administration by allowing carriers to report the various cellular properties at a common holding company or aggregate level rather

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<sup>13</sup> NPRM, para. 30.

<sup>14</sup> See, "Affiliate Transactions" sheet pertaining to "Southwestern Bell Wireless Holdings, Inc., from SWBT's FCC-filed Cost Allocation Manual, attached hereto as Exhibit A.

than having each market area (i.e. individual corporation or partnership) file individual assessment reports. Thus, for the SBC cellular properties a single fee remittance report could be filed at the Southwestern Bell Wireless Holdings, Inc. level instead of individual fee remittance reports being filed for each market area.

Reporting at a holding company or aggregate of market area level would also ease carrier concerns about confidential treatment of sensitive information such as the number of customers a carrier in a competitive environment has in a particular market area. For example, while SBC releases aggregate information about the number of cellular customers it has, the number of customers per market area is not made public and is treated internally as confidential information. Requiring the reporting of such information on a market area basis would generate countless requests under the Freedom Of Information Act<sup>15</sup> for confidential treatment of the fee remittance forms, which is directly contrary to the Commission's stated goal in this proceeding.<sup>16</sup> Alternatively, the Commission should adopt a simplified method for carriers to request confidential treatment of the fee remittance forms to protect information the carrier does not make public.

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<sup>15</sup> 5 U.S.C. §552, et seq.

<sup>16</sup> The Commission notes that its goals in this proceeding include ensuring that the fee collection process imposes little or no additional paperwork on the public. NPRM, para. 2.

IV. TIER 1 LEC ACCESS LINE COUNTS SHOULD BE BASED UPON BILLABLE ACCESS LINES REPORTED ON FCC REPORT 43-01.

For fiscal year 1994, LECs will be assessed a regulatory fee of \$60 per 1,000 access lines.<sup>17</sup> In its NPRM, the Commission identifies the number of access lines of the top 20 LECs, from the Holding Company Report (U.S. Telephone Association 1993).<sup>18</sup> However, SBC submits that for the purpose of assessing and collecting such fees from a Tier 1 LEC, the Commission should rely upon the total billable access line count reported at Line 2150 of that LEC's certified ARMIS Quarterly Report (FCC Report 43-01), filed on March 31 with the Commission.<sup>19</sup> This report is generated in accordance with the Commission's rules established in CC Docket No. 86-182, Automated Reporting Requirements for Certain Class A and Tier 1 Telephone Companies (Parts 31, 43, 67 and 69 of the FCC's Rules).<sup>20</sup> Accurate Tier 1 LEC access line counts would be virtually guaranteed if such counts were obtained from the same system the Commission now uses to administer its own accounting, joint cost, jurisdictional separations, rate base, and access charge rules for Tier 1 LECs.

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<sup>17</sup> 47 U.S.C. §§159(b)(1)(C) and 159(g); NPRM, para. 89.

<sup>18</sup> NPRM, Appendix C.

<sup>19</sup> The FCC Report 43-01 filed on March 31 contains the billable access line count for the period January 1 through December 31 of the preceding year.

<sup>20</sup> 2 FCC Rcd 6283 (1987), on reconsideration, 3 FCC Rcd 6375 (1988).

V. CONCLUSION

The foregoing comments seek to minimize the burden upon companies who must pay the newly-prescribed fees, without adverse impact upon the Commission's operations. SBC urges that the Commission adopt them.

Respectfully submitted,

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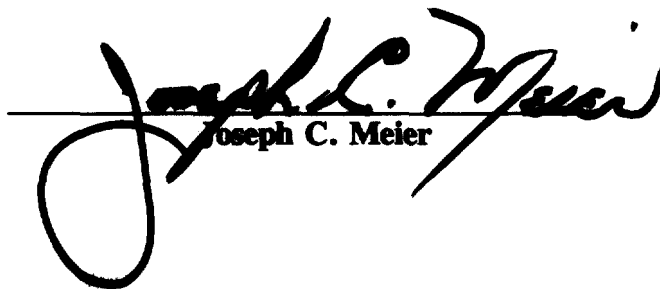


REV. 12/21/93



**CERTIFICATE OF SERVICE**

I, Joseph Meier, hereby certify that the foregoing  
"Comments of Southwestern Bell Telephone Company", in  
Docket No. MD 94-19 has been served this 7th day of April,  
1994, to the Parties of Record.

  
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